

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

December 12, 2007

LAURA H.  
CHAIR  
BOARD OF LAND AND NATURAL  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

BOR-PM 0206.08

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gary Yokoyama, Vice-President  
Corporate Counsel  
Castle and Cooke Resorts  
P.O. Box 630310  
Lanai City, Hawaii 96793

Dear Mr. Yokoyama,

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease B-00-01 (the Lease) you are hereby served a Notice of Default on said lease for failure to do the following:

1. Item 41, page 14 of the Lease states the following: Full utilization of the land. The Lessee shall, within the first year of the lease term, utilize the land under lease for the purposes for which this lease is sold, all in accordance with a plan of development and utilization which shall be submitted by the Lessee within six (6) months of the lease commencement date for approval by the Chairperson. The Lessee shall not commence any improvement work prior to approval of the plan; provided, however, that should the Chairperson fail to render a decision either for or against the plan within sixty (60) days following receipt of the plan, the Lessee may proceed with the work.

As of this date, no such plan has been submitted to the Chairperson for approval, and the land has not been utilized for the purposes set forth in this lease as more specifically set forth below.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

2. Item 51, page 16 of BOATING LEASE NO. B-00-1 states the following: Boating slip leasing provisions. The Lessee shall develop and build approximately twenty-four (24) slips as shown in Exhibit "D" and adopt terms and conditions for the leasing of approximately nineteen (19) slips not subject to dedication as set forth below ("Leasing Program"):

- a. Dedicate five (5) slips to the State of Hawaii, the locations of which shall be determined by Lessee, without any compensation payable by the State (Dedicated Slips"); provided that Lessee shall not be liable to pay lease rent to the State for the Dedicated Slips; and
- b. Lessee shall develop and adopt terms and conditions for the leasing of slips not subject to dedication ("Leasing Program"). Seven (7) of these slips (Reserved Slips") shall be reserved and made available to be offered to individuals on the waiting list compiled by the Department of Land and Natural Resources; Division of Boating and Ocean Recreation ("DOBOR") for slips at the Manele Bay Harbor determined as of the date the initial offer to lease is made to the person holding the highest priority ("Waiting List"). DOBOR shall offer the Reserved Slips to persons on its Waiting List according to priority and pursuant to its customary practice; subject, however, to the terms of Lessee's Leasing Program. Within 120 days from the date that the initial offer to lease was made to the person holding the highest priority on the Waiting List, DOBOR shall provide lessee with a written list of names of the persons from its Waiting List who will lease the Reserved Slips ("Reservation List"), as well as a written certification that all persons on the Waiting List had been given an opportunity to lease one of the Reserved Slips and upon receiving said certification from DOBOR, or, if Lessee does not receive the Reservation List and Written certification from DOBOR within said 120 day time period, Lessee, in its discretion, may then lease any unleased Reserved Slips to any person pursuant to its Leasing Program; provided, however, that if any Reserved Slip shall subsequently become vacant at any time, the Reserved Slip shall be offered first to persons on DOBOR's Waiting List according to the procedures and terms set forth above such that there will always exist the opportunity to have seven (7) slips leased to those on DOBOR's Waiting List.

No slips have been developed, built, or made available within the leased area as required by the lease, aside from a single slip that is being utilized by the Lessee. Thus no slips have been made available to the State.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

3. Item 52, page 17 states the following: Additional improvements. The lessee shall at its own cost and expense, construct, manage, and maintain the following improvements to the Manele Bay Harbor:
  - a. Pave a 15' x 50' pad for a Boat wash down area on the south side of the harbor by the boat launch ramp.
  - b. Install a 100' x 2' walkable surface on the rock groin on the north side of the harbor adjacent to the Premise (sic); and

- c. Provide and maintain utilities, including but not limited to conduits, mains and other facilities necessary to provide adequate telephone, electrical and water lines that Lessee will be bringing to the Premises, at such locations and in such manner as Lessee will designate; provided however, that should Lessor require increased capacity for any of these utilities to provide services to the Manele Bay Harbor, any and all expenses related to the increased capacity shall be at the sole cost and expense of Lessor.

As of this date, none of the additional improvements have been constructed.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

4. Item 53, page 18 states the following: The non-exclusive easement area. For the purpose of accessing leased area, and within easement area construct, and maintain a paved parking lot, landscaped picnic area, and installing utilities to this area, more particularly described in Exhibit "C" (Exhibit "C" is for planning and depiction purposes only, is non – binding and subject to change.) and shall be subject to the following:

- a. These easement rights shall cease, and terminate and the easement area shall automatically be forfeited to the Lessor, without any action on the part of the Lessor, in the event of non-use or abandonment by the Lessee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

....

- g. The Lessee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Lessee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Lessor's satisfaction the areas affected by such pollution or contamination, all at the Lessee's own cost and expense.

As of this date, none of the specified improvements to be located in the non-exclusive easement area have been constructed. Further there have been instances where storm waters have flowed through the non-exclusive easement area depositing silt and debris into the Manele Bay Small Boat Harbor.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

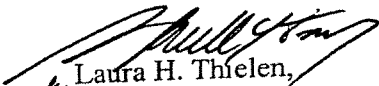
Your failure to act on the above matter may result in one or more of the following:

Gary Yokoyama, Vice-President  
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1. Cancellation of BOATING LEASE NO. B-00-1.
2. Retention of all sums heretofore paid under BOATING LEASE NO. B-00-1 as liquidated damages.
3. Termination of all your rights and obligations under BOATING LEASE NO. B-00-1.
4. Retention of all buildings and improvements constructed by Lessee.
5. Forfeiture of your lease performance bond.

We therefore urge your fullest cooperation. Should you have any questions, please contact William R. Andrews, at our Division of Boating and Ocean Recreation at (808) 587-1978.

Sincerely,



Laura H. Thielen,  
Chairperson

cc: Land Board Member  
Central Office  
Fiscal Office  
Security Interest Holder  
Bond Holder  
Division of Boating and Ocean Recreation